

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED

NOV 30 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment to the Commission's)
Rules Regarding a Plan for)
Sharing the Costs of Microwave)
Relocation)

WT Docket No. 95-157

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS
OF
THE SOUTHERN COMPANY

By: Carole C. Harris
Christine M. Gill
Tamara Y. Davis

McDermott, Will & Emery
1850 K Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 887-8000

Its Attorneys

Dated: November 30, 1995

No. of Copies rec'd 24
List ABCDE

TABLE OF CONTENTS

SUMMARY	i
STATEMENT OF INTEREST	2
BACKGROUND	3
COMMENTS	4
I. The Reimbursement Cap Imposes an Artificial Limit on Reimbursement Costs for Microwave Link	4
II. Any Interference to Microwave Incumbents Should Trigger Reimbursement Obligations . .	8
III. The Stricter System Reliability Standard Must be Maintained in the Definition of Comparable Facilities	10
IV. Clearinghouse Role Should Be Limited	11
V. Microwave Incumbents Must be Allowed to Maintain Primary Status	12

SUMMARY

Southern supports the overall goal of this proceeding -- to eliminate the unjust enrichment gained by PCS licensees after an interfering microwave link has been relocated by a previous PCS licensee. Nevertheless, Southern believes that certain aspects of the Commission's proposal will adversely affect incumbent 2 GHz microwave licensees to the extent that their microwave systems will be significantly de-valued or under-valued. Southern also believes that the proposals advanced in this proceeding affect the good faith negotiation process between PCS entities and microwave incumbents. Specifically, Southern opposes the mandatory per-link cap on the amount to be reimbursed. Southern also opposes the criteria used for determining system reliability as a definition of "comparable facilities" and the exclusion of adjacent channel interference as a factor which triggers the reimbursement obligations. Finally, Southern believes that the clearinghouse's role should be limited regarding use of confidential information, and that microwave incumbents should be allowed to maintain primary licensing status in the 2 GHz band if never relocated by a PCS entity.

BEFORE THE

RECEIVED

NOV 30 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation

WT Docket No. 95-157

To: The Commission

COMMENTS

OT

THE SOUTHERN COMPANY

The Southern Company ("Southern"), through its

undersigned counsel and pursuant to Section 1.415 of the

Federal Communications Commission's rules, respectfully

submits the following Comments on the above-captioned Notice

of Proposed Rule Making ("NPRM").^{1/}

1/ Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, Notice of Proposed Rule Making, adopted October 12, 1995, 60 Fed. Reg. 55529 (November 1, 1995).

STATEMENT OF INTEREST

1. Southern and its operating companies are licensees of numerous private operational-fixed microwave facilities throughout their service areas.^{2/} Southern primarily uses its private operational-fixed microwave facilities for internal communications and for operational communications with interconnected electric utilities. Southern's microwave system provides critical point-to-point communications for daily and emergency operations. A significant number of Southern's microwave links are licensed in the 2 GHz band which has been reallocated for Personal Communications Service ("PCS"). Southern has already been approached by PCS licensees concerning the relocation of its 2 GHz microwave links, and believes that certain aspects of this NPRM may impact its negotiations with PCS licensees. In this regard, Southern has a strong interest in the outcome of this proceeding.

^{2/} Southern is an electric utility holding company which wholly owns the common stock of five electric utility operating companies -- Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company -- a system service company -- Southern Communications Services, Inc. -- which together operate an integrated electric utility system which services over 11 million consumers in a contiguous area of 122,000 square miles, including most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida and 23 counties in southeastern Mississippi.

BACKGROUND

2. In this proceeding, the Commission proposes to implement a cost-sharing plan whereby a PCS licensee would be reimbursed by other PCS licensees for relocating incumbent 2 GHz microwave licensees. PCS licensees who determine that their PCS operations will interfere with existing 2 GHz microwave links have a right to enter into negotiations with incumbent licensees to relocate the microwave links with which they may potentially interfere. Nevertheless, as pointed out by some PCS industry players, removal of certain microwave links will accrue a benefit to subsequent PCS licensees whose channels fall in the same frequency block or market area. Southern agrees that it is inequitable to unjustly enrich subsequent PCS licensees by allowing relocation of incumbent microwave licensees without compensation to the original PCS relocater.

3. An equally serious issue for microwave licensees such as Southern is the disruption caused when only one path of a multi-path microwave system is replaced. Southern believes that equitable cost-sharing should make it easier for parties to negotiate comprehensive system relocation agreements. The proposals advanced in this NPRM move toward achieving these objectives, but fail to ensure fairness to

all parties involved in this relocation process. In this regard, Southern submits the following Comments for the Commission's consideration.

COMMENTS

I. The Reimbursement Cap Imposes an Artificial Limit on Reimbursement Costs for Microwave Link

4. The NPRM proposes to impose a \$250,000 per link limit (an additional \$150,000 if a new tower is required) on the amount that a PCS licensee can be reimbursed. NPRM at ¶ 42. The Commission believes that a cap is necessary to protect subsequent PCS licensees from being required to contribute to excessive relocation expenses. Southern appreciates the Commission's concerns about imposing an open-ended relocation payment on subsequent PCS licensees. Nevertheless, Southern is equally concerned that the reimbursement cap will, in effect, act as an artificial limit on the relocation costs for microwave links. Southern believes that during relocation negotiations, especially in the voluntary period, the cap may become the maximum amount that a PCS relocater will be willing to pay for the relocation of a microwave link. The cap will establish an automatic ceiling on the relocation cost of a microwave link without allowing parties to negotiate in good faith.

Southern believes that in many cases relocation costs may exceed \$250,000 per link, especially in urban areas.

5. A set figure also does not take into account the complexity of the transaction, particularly when numerous links are involved. In some instances, replacement frequencies may not be available and fiber optics must be used. Replacement costs for fiber can vary greatly depending on the availability of rights-of-way and the type of security measures that are required to protect these facilities. While Southern understands that technically a reimbursement cap does not limit the amount that the first PCS licensee could pay an incumbent, the "FCC-approved" figure is likely to limit that amount. This may have the unintended effect of making voluntary negotiations more difficult if PCS licensees believe they can force microwave incumbents to accept the agency-approved figure.

6. Rather than imposing a mandatory cap, Southern suggests that a floating cap be used. The reimbursement figure could not exceed (1) the actual amount paid by the PCS relocater to move a 2 GHz link, or (2) the total amount paid by a PCS relocater to move a link within its Metropolitan Trading Area ("MTA") when it is the sole licensee interfering with that microwave link ("Target

Cost"), whichever is less. If a dispute arises, Southern recommends that the PCS relocater be required to submit verified documentation of the relocation costs to the proposed clearinghouse which would allow only the actual relocation costs or the Target Cost to be reimbursed based on the cost-sharing formula. Using as a potential ceiling the cost which a PCS relocater paid to relocate a link for which it is solely responsible acts as a significant disincentive against burdening subsequent PCS licensees with excessive relocation costs. It is also fairer to 2 GHz licensees since they will not be in a position of negotiating against an arbitrary FCC-approved number which may not at all mirror the relocation costs involved in their particular situation. In this way, the clearinghouse would still have the responsibility of assuring that no subsequent PCS licensee pays excessive relocation expenses while allowing true voluntary negotiations to take place between incumbents and PCS entities based on conditions relevant to a particular market area.

7. In addition, Southern supports allowing a PCS relocater to be fully reimbursed without a cap limitation in instances where it relocates a microwave link whose endpoints are outside of its licensed service area. Southern also supports full reimbursement without a cap

limitation where a PCS licensee relocates a link that is both outside of its market area and outside of its frequency block. Where the PCS relocater takes the initiative to relocate links outside of its frequency block or market area, it seems only equitable that full reimbursement be allowed in those instances to accommodate incumbents who need to relocate entire systems crossing several MTAs. The value to the subsequent licensees, who will benefit from not having to go through the spectrum clearing process in regard to these links should be ample justification for allowing the PCS relocater to recover its full costs.

8. As indicated, removal of one link in a multi-link microwave system is disruptive and can affect the reliability of the entire system. This is detrimental to critical applications, and is unacceptable for most microwave incumbents. The Commission must recognize the degradation of critical communications facilities is not in the public interest, and should encourage system-wide relocation wherever possible. Unfortunately, microwave incumbents like Southern are faced with PCS entities that wish to negotiate link-by-link over a period of years. This type of piecemeal relocation causes an unacceptable disruption to a utility's operations. Accordingly, Southern recommends that, at a minimum, during the mandatory

relocation period, PCS licensees be required to relocate all the links in their frequency block in the service area. Such relocation would confer reimbursement rights on the PCS relocater. This is the only equitable solution that will ensure that 2 GHz microwave systems will not be unjustly disrupted, and left to operate systems in a fragmented manner.

II. Any Interference to Microwave Incumbents Should Trigger Reimbursement Obligations

9. The Commission has tentatively concluded that the Telecommunications Industry Association's "Telecommunications Systems Bulletin 10-F" should be the standard for determining interference for the purpose of the cost-sharing plan. The Commission, however, proposes to limit the type of interference to microwave incumbents that will trigger reimbursement rights to co-channel interference. NPRM at ¶ 53. While Southern supports use of Bulletin 10-F as the standard for determining microwave interference, it disagrees that only co-channel interference to the microwave incumbent should trigger reimbursement rights. When promulgating its rules for relocation of microwave incumbents, the Commission did not specify the type of interference from which the microwave incumbents should be protected. Rather, the Commission simply stated

that PCS licensees must fully protect incumbent microwave operations. See 47 C.F.R. § 24.37(b). The Commission itself recognized the problems associated with interference to a microwave transmission, and placed no limitation on the type of interference protection that should be given to microwave incumbents. Southern's microwave system provides critical communications involving the safety of its personnel and the public alike in the generation, transmission, distribution and use of electric utility. As discussed more fully below, Southern requires complete reliability from its microwave systems. Any potential interference destroys the reliability required by other federal agencies such as the Nuclear Regulatory Commission and the Federal Emergency Management Agency. Southern believes that any potential interference, whether co-channel or adjacent channel, is equally harmful to microwave systems. The Bulletin 10-F interference standards which now account for PCS-to-microwave interference should indicate whether co-channel or adjacent channel interference is likely. Using Bulletin 10-F, Southern believes that any indication of potential interference to a microwave system must be protected, and should trigger the reimbursement obligation for the purposes of this proceeding.

**III. The Stricter System Reliability Standard Must be
Maintained in the Definition of Comparable Facilities**

10. The Commission acknowledged the issues presented in instances where a PCS licensee chooses to replace the microwave incumbent's entire system rather than relocate a single link within the system for the purpose of determining the definition of "comparable facilities." In this regard, Southern supports the Commission's definition of a comparable facility as a system that is equal to or superior to the fixed microwave facility being replaced. NPRM at ¶ 72. Southern also supports the general factors to be considered when determining comparable facilities: communications throughput, system reliability and operating cost. NPRM at ¶ 73. However, system reliability remains especially important to microwave incumbents such as Southern to ensure accurate and timely transmission of point-to-point communications. For example, microwave radio links in a utility environment generally provide 99.9999 percent reliability. Utilities have come to rely on this reliability standard, and demand complete assurance of accurate, timely point-to-point communications. Comparable facilities also must provide this same reliability. Southern disagrees, therefore, with the Commission's proposal to only require e.g., overall reliability to be only 99.999 percent where limited battery back-up power may

diminish system reliability. NPRM at ¶ 74, n. 126.

Incumbents should be entitled to the same system reliability that their system is currently designed to meet.

IV. Clearinghouse Role Should Be Limited

11. Southern agrees that a neutral clearinghouse could be used as an effective mechanism to facilitate and administer the cost-sharing proposal. However, there are certain elements of the Commission's proposal which are not practical. First, Southern agrees that the clearinghouse must be truly neutral and not simply an arm of the PCS industry. This is particularly true in light of the more difficult problem of sensitive business information which this body would be required to handle. Southern does not believe that confidential business information should be required to be submitted to the clearinghouse without an adequate guarantee of protection for confidential information. Confidentiality is a standard provision of most contracts of this nature and making such information routinely available is unwarranted. Therefore, the Commission should not require that actual contracts be submitted to the clearinghouse, but instead, allow a verified affidavit documenting costs in a redacted form to be considered adequate to verify costs.

V. Microwave Incumbents Must be Allowed to Maintain Primary Status

12. The Commission proposes to relegate all 2 GHz microwave operations to secondary status after April 4, 2005. NPRM at ¶ 90. The Commission reasoned that because the band has been reallocated for PCS that any remaining 2 GHz microwave operations should receive secondary licensing status. Southern disagrees. This is especially critical in rural areas where a microwave incumbent may never be approached for relocation, and once the year 2005 arrives, a microwave incumbent could be faced with interference from a late-arriving PCS licensee and will have no opportunity to be relocated. Licensees such as Southern have systems spanning rural areas and there is no reason to treat various portions of these systems differently. This is particularly important in light of the essential communications transmitted over the entire system. Accordingly, the microwave licensee should be allowed to continue operating with primary licensing status for the duration, including renewals, of its license or until relocated by the PCS licensee. To do otherwise is contrary to the public interest as embodied in the FCC current rules.^{3/}

^{3/} See 47 C.F.R. § 94.59(c); See also, Development of Spectrum to Encourage Innovation in the Use of New
(continued...)

13. Furthermore, Southern opposes the proposal to place any additional burden of proof requirements on the incumbents when seeking to modify their microwave authorizations. Specifically, Southern opposes having to make an additional showing that its proposed modifications will not increase the relocation costs for a PCS licensee. This burden should rest solely with the PCS licensee since it is the only entity familiar with its proposed operations and how incumbent microwave operations may cause interference to it. An incumbent has no way of determining whether its modification will add to the PCS licensee's relocation costs. Southern recommends that the PCS licensee avail itself to the 30-day Public Notice period to oppose any modification application that it believes will increase its relocation costs. By filing a petition to deny an application for modification, the PCS licensee can initiate and call to question any perceived increase in relocation costs. Only then should the microwave incumbent be required to justify that its modification will not increase the relocation costs for the PCS licensee.

^{3/}(...continued)

Telecommunications Technologies, ET Docket No. 92-9, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6591, 6596 (1993) ("... all existing fixed microwave operations will retain co-primary status with new services and devices.") (Emphasis added).

WHEREFORE THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon its Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted

THE SOUTHERN COMPANY

By: 

Carole C. Harris
Christine M. Gill
Tamara Y. Davis

McDermott, Will & Emery
1850 K Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 887-8000

Its Attorneys

Dated: November 30, 1995